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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

In re A.Y., a Person Coming Under the Juvenile
Court Law.

YOLO COUNTY DEPARTMENT OF
EMPLOYMENT AND SOCIAL SERVICES,

Plaintiff and Respondent,

v.

C.Y.,

Defendant and Appellant.

C076464

(Super. Ct. No. JV14082)

C.Y., father of the minor, appeals from the judgment of disposition removing the minor from the parents' custody. (Welf. & Inst. Code, §§ 358, 361, 395; undesignated statutory references are to the Welfare and Institutions Code.) Father argues (1) there was insufficient evidence of substantial danger to the minor if returned to his custody and (2) the juvenile court did not consider a reasonable alternative to removal. We conclude (1) substantial evidence supports the juvenile court's order removing the minor from the

home and (2) the juvenile court properly concluded there were no reasonable alternatives to protect the minor other than removal. Accordingly, we affirm the judgment.

FACTS

In February 2014, both parents were arrested for manufacturing and selling concentrated cannabis.¹ The seven-year-old minor, A.Y. was placed in protective custody with the maternal grandmother.

The Yolo County Department of Employment and Social Services (Department) filed a petition alleging the minor was at risk of physical harm due to the parents' failure to protect him from father's concentrated cannabis manufacturing operation using butane in the garage, from the presence of marijuana and drug paraphernalia in the home that were accessible to the minor, and from being taken by the parents to places where father sold the concentrated cannabis. Father, who had a medical marijuana card for back pain, denied the minor had access to the manufacturing operation or marijuana although there were toys around the manufacturing site and marijuana and paraphernalia throughout the house. Mother admitted using marijuana and was aware of father's manufacturing operation. The minor said the parents argued daily and one argument while father was driving the car led to an accident. The minor said he saw father smoking something gold or blackish brown that father said was medicine and was made in the garage. The Department offered substance abuse assessment and treatment, mental health assessment and therapy, parenting classes, and other services as necessary pending further hearings. The court ordered the minor detained.

¹ A.Y. was subject to a prior dependency proceeding in 2008 based on mother's arrest for possession of methamphetamine and marijuana. Father was in prison on drug-related charges at the time. Mother participated in services and, on his release, father submitted to drug testing. Both reunified with A.Y. in 2010.

At the jurisdiction hearing in March 2014, the Department informed the juvenile court that the parents were referred to services and appeared to be actively engaged. The court sustained the petition as amended.

The disposition report filed in April 2014 recommended continued foster placement and services for both parents. The report reviewed the parents' issues including mother's long history of polysubstance abuse and relationship issues. Father had a history of drug-related criminal behavior and significant substance abuse for which he was treated in 2001 while in state prison. Father suffered from back pain he said was helped by chiropractic treatment, but pointed out the treatment was more expensive than using marijuana under his medical marijuana card. Father said he was clean after reunifying with the minor in 2010, but relapsed when he got a medical marijuana card. At the time of the report, father had begun substance abuse treatment at the Outpatient Substance Abuse Recovery Program (OSARP). Based on the parents' issues, the Department had referred the parents to substance abuse treatment services, and parenting and counseling, both individual and family. The parents continued to live together and maintain their relationship.

At the disposition hearing on April 17, 2014, following an off-the-record conference between the juvenile court, counsel, and the social worker, father's counsel informed the court father was trying to get services from Solano County because the Department was not offering any services that were reasonably accessible to him. Father was also attempting to create a customized program with the service provider to allow him to participate in Woodland rather than West Sacramento. The matter was set for a contested hearing.

At the contested hearing on April 29, 2014, the social worker testified she referred father to OSARP through John H. Jones CommuniCare. Mother had been participating in OSARP and drug testing. Father did start services at CommuniCare but was discharged for absences. The Department was able to set up a treatment program in

Woodland and father was scheduled to start in May after a mandatory 30-day waiting period. Father had not contacted the parenting education provider to start classes and had not provided verification of participation in a 12-step program. In the social worker's opinion, until father made some progress in substance abuse treatment and couples' counseling to improve the parents' relationship and conflict resolution skills, the minor would continue to be at risk if returned home.

In cross-examination, the social worker acknowledged the parents' arrests and the manufacturing of concentrated cannabis were the causes of the minor's removal and father had a medical marijuana card. However, because father had referred to his use of marijuana after securing the card as a "relapse," he was referred to substance abuse treatment. The social worker also acknowledged domestic violence was not alleged in the petition as being a risk to the minor. A Department visit in March 2014 found the home had been cleaned to some degree and the manufacturing operation and materials were no longer there. The social worker testified that the Department's concern was the lack of judgment shown by the parents in allowing the marijuana and drug lab to be accessible to the minor. By participating in substance abuse treatment and developing a relapse prevention plan, the parents would gain an understanding of the risks that drugs available to the minor could pose. As for returning the minor to mother, the social worker testified mother must substantially complete her plan and demonstrate the ability to remain sober for a period of time given her past substance abuse problems. The social worker agreed that, although Safety Organized Practice (SOP) meetings, which include family and other supportive people, have been used with some families to develop a safety plan, the meetings are not used in every case and were not used in this case. This family had already identified family members that were participating with the minor and a referral was not made to a specific meeting process. The social worker testified that mother is in phase II of OSARP and the home visit disclosed no risk factors; however, the parents did not yet have a relapse prevention plan. The social worker said it might be

possible to return the minor to mother if father left the home and there was additional safety planning.

The juvenile court ruled it was the parents' fundamental lack of judgment, both about their situation and how their situation impacted the minor, that formed the foundation of the allegations sustained in the petition. The court found that, until the parents had done everything reasonably possible to avoid repeating the prior dangerous behaviors, the minor remained at risk in their care. The court further found that as long as father, who had not participated in any services, lived in the home, the minor should remain out of the home. While mother had been participating in services, she needed to complete her plan and show she had changed so she would not return to her past destructive behavior. The court found that, while the Department had not offered every service they could have, they offered reasonable services to both parents in an attempt to avoid a removal order. The court adopted the recommended findings and orders including removing the minor from parental custody and adopting a reunification plan that included substance abuse treatment, individual and family counseling services, and parenting programs.

DISCUSSION

Father contends the juvenile court erred in removing the minor from the home because substantial evidence did not support a finding that the minor would be at risk if returned home and, further, the court failed to explore reasonable alternatives to removal.

“A dependent child may not be taken from the physical custody of his or her parents . . . with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence” that “[t]here is or would be a substantial danger to the physical health, safety, protection or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s . . . physical custody.” (§ 361, subd. (c)(1).)

When the sufficiency of the evidence to support a finding or order is challenged on appeal, even where the standard of proof in the trial court is clear and convincing, the reviewing court must determine if there is any substantial evidence -- that is, evidence that is reasonable, credible and of solid value -- to support the conclusion of the trier of fact. (*In re Angelia P.* (1981) 28 Cal.3d 908, 924; *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.) In making this determination we recognize that all conflicts are to be resolved in favor of the prevailing party and issues of fact and credibility are questions for the trier of fact. (*In re Jason L.*, *supra*, 222 Cal.App.3d at p. 1214; *In re Steve W.* (1990) 217 Cal.App.3d 10, 16.) The reviewing court may not reweigh the evidence when assessing the sufficiency of the evidence. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

A.

Substantial Danger to the Minor

Father argues there was no ongoing risk to the minor because the parents' criminal history did not create a pattern of abuse or neglect and the social worker's subjective belief that the parents lacked judgment was not a sufficient basis for removal.

The juvenile court found removal was required because the parents lacked judgment about their situation and how it affected the minor. The parents' lack of judgment was not merely a subjective belief of the social worker, but was grounded in the facts set forth in the petition, i.e., manufacturing drugs in the home using a dangerous chemical, allowing marijuana to be available to the minor and subjecting the minor to the well-known dangers inherent in selling drugs. The behavior that led to removal was not an isolated incident but rather the culmination of a pattern of involvement in the drug culture by both parents including drug use, possession, transportation, and father's drug-related arrests over many years. Both parents had successfully participated in prior treatment programs but both relapsed and neither was able to recognize the risks their lifestyle presented to the minor. Similarly, father minimized the effect on the minor of

daily arguments and the resulting stress levels in the home. The services offered by the Department could be expected, over time, to improve both the judgment and insight of each parent and lead to the resumption of a normal family relationship. However, due to the parents' entrenched behaviors, the court necessarily concluded that measures such as removal of the manufacturing operation, the marijuana and the paraphernalia from the home were, at best, a first step. Until the parents were able to participate in services and demonstrate significant positive change, the minor would be at risk in their care.²

B.

Reasonable Alternatives to Removal

Father argues the juvenile court failed to consider alternatives to removal such as stringent supervision while the parents participated in services or, alternatively, removing father from the home with a safety plan for mother and the minor.

The court properly concluded there were no "reasonable means" to protect the minor other than removal. The court did consider excluding father from the home, but recognized that, with mother's history of substance abuse and relapse after treatment in the previous dependency, the minor would not be safe in the home until mother had demonstrated significant progress in sobriety and understanding of how her behaviors negatively impacted her own and the minor's well being.

Father suggests close supervision would be an adequate safeguard. However, the level of supervision necessary would not be a reasonable alternative to removal given the

² "We do not perceive that Father must necessarily forgo the use of medical marijuana." (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 454.) However here, as in *Alexis E.*, the record shows the manner in which he has been using it -- including manufacture of concentrated cannabis in the home, sale of concentrated cannabis, and use of marijuana at a level father characterized as a relapse -- represents a risk to the minor and drug counseling is appropriate.

parents' ingrained destructive behaviors, involvement in substance abuse, and lack of understanding of the risks to the minor posed by those behaviors.

We conclude substantial evidence supports both the juvenile court's order removing the minor from the home and the court's finding there were no other reasonable alternatives to protect the minor.

DISPOSITION

The judgment is affirmed.

HOCH, J.

We concur:

ROBIE, Acting P. J.

MAURO, J.